

REMARKS

Applicants would like to express appreciation to the Examiner for the detailed Official Action provided, for the acknowledgment of Applicants' Information Disclosure Statement by return of the form PTO-1449. Applicants would also like to express appreciation to the Examiner for allowance of claims 18-38. Upon entry of the present paper, claims 1, 2, 6, 7, 9-11 and 13-16 will have been amended, with claims 1-38 pending before the Examiner, of which claims 18-38 standing allowed.

As discussed *supra*, the Examiner has objected to claims 2 and 6-7 as failing to further limit the subject matter of a previous claim. Specifically, the Examiner noted that the sealed reference containers are not positively recited as an element of the device. As discussed above, solely to expedite the patent application process and without agreeing to the propriety of the Examiner's objection, Applicants have amended claim 2 to further define the second housing, and has amended claims 6 and 7 to further define the laser source. It is thus submitted that these amendments overcome the Examiner's objection to these claims, and Applicants respectfully request that the Examiner withdraw the objection to these claims

Also as discussed *supra*, the Examiner has rejected claims 1-17 under 35 U.S.C. § 112, second paragraph, as being indefinite. With respect to claim 1, the Examiner noted that "it is not clear how the device is configured to alternately convey the test and reference container(s) since they are not positively recited as an element of the device." As discussed *supra*, in accordance with the telephone interview of August 31, solely to expedite the patent application process and without agreeing to the propriety of the Examiner's objection, Applicants have amended claim 1 to recite

first housings that house the test containers and at least one second housing that houses the at least one reference container, and to recite that the conveyor alternatingly conveys at least one first housing of said plurality of first housings and said at least one second housing such that a respective at least one sealed test container of the plurality of sealed test containers and the at least one sealed reference container are alternatingly conveyed through said zone, to explicitly recite what was already implied in claim 1 (*i.e.*, that the different types containers are alternatingly conveyed through the zone). With respect to the other amendments to claim 1, such amendments have been made merely to change the order of certain elements (*e.g.*, the pre-inspection region, an inspection region and a post-inspection region) for easier reading, and to render the remainder of the limitations consistent with the amendment to recite the housings. Similarly, the amendments to dependent claims 2, 6, 7, 9-11 and 13-16 have been made solely to render the limitations of these claims consistent with the amendment to independent claim 1 to recite the housings.

Similarly, with respect to claims 9 and 15, solely to expedite the patent application process and without agreeing to the propriety of the Examiner's objection, Applicants have amended these claims to generally recite that the plurality of sealed reference containers is held in the corresponding plurality of second housings, which in turn are affixed to [the starwheel in claim 9, and the linear feeder in claim 15].

With respect to the Examiner's rejection of claim 2 under 35 U.S.C. § 112, second paragraph, in which the Examiner noted that "it is not clear why the at least one language is used in the claim," Applicants respectfully note that the recitation that at least one sealed reference container comprises a plurality of sealed reference containers is definite and clear to one skilled in the art, since the

“plurality” recited in claim 2 means two or more and within a range understood to one skilled in the art, and since the “at least one” means one or more and within a range understood to one skilled in the art. It is thus respectfully requested that the Examiner withdraw the rejection under 35 U.S.C. § 112, second paragraph.

The Examiner has rejected claims 1-2, 7, 11 and 17 under 35 U.S.C. § 103(a) as being unpatentable over KATO in view of NIX, RAE or GROSS. Initially, Applicants note that the Examiner’s rejection under 35 U.S.C. § 112, the Examiner did not accord patentable weight to the claimed alternate conveying of at least one test container and at least one reference container through the zone (as recited in claim 1), since as discussed *supra*, the Examiner found that “it is not clear how the device is configured to alternately convey the test and reference container(s) since they are not positively recited as an element of the device.” Thus, for examination purposes, the Examiner has treated claim 1 “as a conveyor configured to convey a plurality of containers and a sensor disposed along the conveyor and including a laser and a detector.” As discussed *supra*, Applicants respectfully disagree with the Examiner’s interpretation and assert that one skilled in the art would understand the claimed alternate conveying of the test and reference containers. Nevertheless, in view of the clarifying Amendment to claim 1 (and the corresponding amendments to dependent claims 2, 6, 7, 9-11 and 13-16), Applicants submit that none of the references of record teach or suggest that container conveyor is further configured to alternatingly convey at least one first housing of said plurality of first housings and said at least one second housing such that a respective at least one sealed test container of the plurality of sealed test containers and the at least one sealed reference container are alternatingly conveyed through said zone, as recited in claim 1. Applicants note that in

the Examiner's Statement of Reasons for Allowance, the Examiner noted that “[t]he art of record fails to teach or fairly suggest . . . the alternate nature of the plurality of test samples and the at least one sealed reference container though a zone of the inspection region by the container conveyer [*sic*, conveyor].” Thus, in view of the above, it is respectfully submitted that the references of record, fail to teach or suggest, in any proper combination, the invention of independent claim 1, as well as the claims dependent therefrom.

With respect to the Examiner's rejection of dependent claims 2, 7, 11 and 17, since these claims are dependent from allowable independent claim 1, which is allowable for at least the reasons discussed *supra*, these dependent claims are also allowable for at least these reasons. Further, all dependent claims recite additional features which further define the present invention over the references of record. It is thus respectfully submitted that all rejected claims are patentably distinct from the references of record.

Thus, Applicants respectfully submit that each and every pending claim of the present application meets the requirements for patentability under 35 U.S.C. §§ 103 and 112, and respectfully requests the Examiner to indicate the allowance of each and every pending claim in the present application.

COMMENTS ON STATEMENT OF REASONS FOR THE INDICATION OF ALLOWABLE SUBJECT MATTER

In response to the Statement of Reasons for the Indication of Allowable Subject Matter, mailed by the U.S. Patent and Trademark Office on May 31, 2005, along with the above-noted Official Action, Applicants wish to clarify the record with respect to the basis for patentability of the allowed claims in the present application. In this regard, while Applicants do not disagree with the Examiner's indications that certain identified features are not disclosed by the prior art references, as noted by the Examiner, Applicants further wish to clarify that each of the independent claims in the present application recites a particular combination of features, and the basis for patentability of each of these claims is further based on the particular totality of the features recited therein. The dependent claims set forth additional basis for their patentability in accordance with their recited limitations as well as in accordance with the particular limitations of the respective base claims.

SUMMARY AND CONCLUSION

In view of the fact that none of the art of record, whether considered alone, or in any proper combination thereof, discloses or suggests the present invention, reconsideration of the Examiner's action and allowance of the present application are respectfully requested and are believed to be appropriate.

As discussed *supra*, Applicants note that this amendment is being made to advance prosecution of the application to allowance, and no acquiescence as to the propriety of the Examiner's rejection is made by the present amendment. The amendments to the claims have not been made for a purpose related to patentability, but rather are clarifying amendments that are cosmetic in nature by rendering explicit what was already implied in these claims, *i.e.*, the alternate conveying of the test and reference containers. The amendments to the claims should thus be considered to have been made for a purpose unrelated to patentability, and no estoppel should be deemed to attach thereto. Accordingly, this amendment should not be considered a decision by Applicants to narrow the claims in any way.

Should the Examiner have any questions or comments regarding this Response, or the present application, the Examiner is invited to contact the undersigned at the below-listed telephone number.

Respectfully submitted,  
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